



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

August 18, 2015

Stefan Pryor

[Redacted address]

Re: Local Government Ethics Law
LFB Complaint #11-088
Notice of Determination

Dear Mr. Pryor:

The purpose of this letter is to apprise you of the Local Finance Board's (Board) final disposition of the above referenced Complaint.

The Local Government Ethics Law (LGEL), N.J.S.A. 40A:9-22.1 et seq., authorizes the Board to initiate, receive, hear and review complaints, and hold hearings with regard to possible violations of the LGEL where no local ethics board has been established. Upon receipt of a complaint against a local government officer or employee, the Board determines if a complaint is within its jurisdiction, frivolous, or has no reasonable factual basis prior to conducting an investigation.

You are hereby notified that a Complaint was filed against you and has been dismissed as having no reasonable factual basis.

The Complaint alleges possible violations of the following provisions of the LGEL:

N.J.S.A. 40A:9-22.5(c) No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges and advantages for himself or others.

....

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

....

N.J.S.A. 40A:9-22.5(h) No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves.

Specifically, the Complaint alleges that you, as Newark Deputy Mayor and Director of Economic and Housing Development, violated the LGEL when you testified at a meeting of the Landmark and Historic Preservation Commission (LHPC) on August 29, 2011, in support of an application by Audible.com to install LED signs on a building it leased in one of the City's historic districts. The Complaint alleges that you (1) used your positions to secure an unwarranted privilege or advantage for Audible.com in violation of N.J.S.A. 40A:9-22.5(c), and (2) represented a party other than the local government in a proceeding pending before an agency of the local government in which you served in violation of N.J.S.A. 40A:9-22.5(h). There was also an issue as to whether you acted in your official capacity in a matter where you had a direct or indirect financial or personal involvement that might reasonably be expected to impair your objectivity or independence of judgment in violation of N.J.S.A. 40A:9-22.5(d).

The courts have held that the LGEL does not preclude local public officials from appearing as advocates before a local public agency in quasi-judicial proceedings, provided that they (1) are representing the public interest, and (2) and have no role in reviewing the local public agency's decision. See Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 57- (1998); S. Brunswick Assocs. v. Twp. Council of Monroe, 285 N.J. Super. 377, 381-84 (Law Div. 1994).

Here, with respect to subsection (c) of the LGEL, there is no indication in the record that Audible.com received a benefit that would not otherwise be available to other businesses operating in Newark's historic districts. Audible.com applied for and received the approval of the appropriate local governing body responsible for approving signage in historic districts.


With respect to subsection (d) of the LGEL, there is no indication in the record that you had a direct or indirect financial or personal involvement in the application. Additionally, there is no indication that you or the Administration had any review authority over the LHPC's determination. According to the City's Administrative Code, an applicant dissatisfied with the action of the LHPC relating to the issuance or denial of a permit shall have the right to appeal to the Board of Adjustment pursuant to N.J.S.A. 40:55D-70a. The Board of Adjustment's decision is final. If the Board of Adjustment affirms the LHPC's denial, the applicant may seek legal remedies as afforded by law. The Mayor, Council and Director of Housing and Economic Development have no role in the approval process.

Finally, with respect to subsection (h) of the LGEL, a review of the transcript of the special meeting indicates that you were clearly representing the Administration's position before the LHPC. You were acting in your capacity as Deputy Mayor and Director of Housing and Economic Development. Unlike cases in which the Board found (h) violations, you were not representing or otherwise appearing on behalf of yourself or a private entity. Here, you were appearing on behalf of the public entity that you represented.

Following a preliminary investigation and evaluation of the facts and circumstances relevant to the Complaint and upon consideration of the foregoing provisions of the LGEL, the Board voted to dismiss the Complaint as having no reasonable factual basis. Pursuant to N.J.S.A. 40A:9-22.9, the local government officer or employee against whom a complaint was filed must be notified of the Board's determination regarding a complaint. No action is required on your part. The case is now closed.

Should you have any questions regarding this matter, please feel free to contact Shannon Hudak at (609) 292-0479.

Sincerely,



Timothy J. Cunningham, Chairman
Local Finance Board

Cc: Complainant